IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4628 OF 1993

Pannalal Jokhoojagannath
and others ... Petitioners

versus

Maharashtra Housing and Area
Development Authority and ors. ... Respondents

...

Mr. Girish Desai with Mrs. Geeta Shastri, for the Petitioners.

Mr. P.N. Karlekar, for Respondents Nos. 3 and 5 to 7.

A.G.P. for Respondents Nos. 1 and 2.

Respondent No. 4 served.

...

CORAM : A.M.KHANWILKAR,J.

19th August 2004

P.C.:

. Heard Counsel appearing for the parties. The order which is impugned in this writ petition is dated 18th October 1993 in Notice of Motion

taken out in Chamber Summons No. 747 of 1991 in S.C.Suit No. 5517 of 1982. By the said Notice of Motion, the Petitioners, plaintiffs, prays that the order passed in Chamber Summons No. 747 of 1991, on October 12, 1993, be set aside and/or recalled, as the same was passed ex parte against the Petitioners, plaintiffs. By the said order dated 12th October 1993, the application preferred by Respondents Nos. 3 to 7 for impleading them as Defendants in the suit was allowed. According to the plaintiffs, the said persons have no concern with the suit premises, being Shop No. 9. However, the trial Court by the impugned order has declined the request of the Petitioners on the reasoning that the Petitioners have no locus standi to take out Notice of Motion for setting aside the order passed in the Chamber Summons No. 747 of 1991 and refused to grant leave to take out the Notice of Motion. This is the limited controversy in the present writ petition.

. After having considered the rival submissions, I have no hesitation in taking the view that the trial Court has committed manifest error in observing that the Petitioners had no

locus standi to take out the Notice of Motion. Admittedly, the Petitioners are plaintiffs and the order passed in Chamber Summons No. 747 of 1991 was to operate against the Petitioners by directing them to implead Respondents Nos. 3 to 7 as party defendants in the suit instituted by them. In the circumstances, the impugned order cannot be sustained. It appears that the additional reason recorded by the Court below is that the Petitioners remained absent on 12th October 1993. Insofar as that reason is concerned, the Petitioners have offered explanation as to the circumstances in which they could not remain personally present and also for the absence of the Advocate on record. The appropriate course, to my mind, in the interest of justice, is to set aside the impugned order as well as the order dated 12th October 1993 and to restore the Chamber Summons No. 747 of 1991 on the file of the trial Court for being decided on its own merits in accordance with law after giving opportunity to both side. I am persuaded to take recourse to this option, as it appears that the factum that Respondents Nos. 3 to 7 are in possession of the suit property is in serious dispute and the Petitioners have asserted that

they are in possession of Shop No. 9. All these matters will have to be examined by the trial Court before holding that Respondents Nos. 3 to 7 are necessary or proper parties to the suit instituted by the Petitioners. Hence, this petition succeeds. The impugned order dated 18th October 1993 as well as the order dated 12thOctober 1993 are set aside and the Chamber Summons No. 747 of 1991 is restored to the file of the trial Court to be decided on its own merits in accordance with law as expeditiously as possible, preferably within three months from the date of receipt of writ of this Court. Petition allowed on the above terms. No order as to costs.

. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)